

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 635 - SB 530

March 11, 2021

SUMMARY OF BILL: Redefines “medical necessity” and “medically necessary” in order to establish a uniform definition.

Defines “medical necessity” as reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent worsening of conditions in the patient that endanger life, cause suffering or pain, result in an illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction and that no other equally effective, more conservative, or substantially less costly course of treatment is available and suitable for the patient's best interest.

Specifies that medical necessity is presumed if a physician who has conducted a physical examination or assessment of the patient, has documented rationale and supportive language in the patient's medical record to support the diagnosis, treatment, and management of an ailment, disease, or illness, and has prescribed, recommended, or approved an order unless sufficient evidence is produced to substantiate that the order is not in the patient's best interest.

Establishes that the new definition of medical necessity and medically necessary apply to:

- The unlawful prescription of anabolic steroids;
- The requirements for treatment of students admitted to residential mental health facilities for which local education agencies (LEA) are required to provide educational services;
- The review of workers' compensation treatments;
- Treatment recommended by a physician or chiropractor, telemedicine service requirements and reimbursements, legend and opioid drug prescriptions, and pharmacy practices, assisted-care living facility services and care, adult behavioral health services, blood donations;
- The general provisions of the Department of Health (DOH), the Department of Commerce and Insurance (DCI), and the Department of Finance and Administration (F&A); and
- The *Healthcare Service Utilization Act*, the *Tennessee Health Carrier Grievance and External Review Procedure Act*, the *Medical Assistance Act*, the Board of Medical Examiners (BME), and the Pharmaceutical Connection Program.

ESTIMATED FISCAL IMPACT:

On March 7, 2021, a fiscal note was issued for this legislation estimating a fiscal impact as follows:

Increase State Expenditures –

Exceeds \$65,798,400/FY21-22

Exceeds \$69,124,200/FY22-23 and Subsequent Years

Increase Federal Expenditures –

Exceeds \$123,144,900/FY21-22

Exceeds \$123,411,500/FY22-23 and Subsequent Years

Increase Local Expenditures –

*Exceeds \$777,400/FY21-22**

*Exceeds \$1,554,800/FY22-23 and Subsequent Years**

And an estimated impact to commerce as follows:

Increase Business Revenue –

Exceeds \$189,720,700/FY21-22

Exceeds \$192,535,700/FY22-23 and Subsequent Years

Increase Business Expenditures –

Less than \$189,720,700/FY21-22

Less than \$192,535,700/FY22-23 and Subsequent Years

Based on new information received from the Division of Benefits Administration, the estimated fiscal impact has been corrected as follows:

(CORRECTED)

Increase State Expenditures –

Exceeds \$67,331,200/FY21-22

Exceeds \$72,189,800/FY22-23 and Subsequent Years

Increase Federal Expenditures –

Exceeds \$123,211,500/FY21-22

Exceeds \$123,544,800/FY22-23 and Subsequent Years

Increase Local Expenditures –

Exceeds \$731,000/FY21-22*

Exceeds \$1,462,100/FY22-23 and Subsequent Years*

Corrected Assumptions:

Division of TennCare:

- Based on information provided by the Division, the proposed legislation's change to the definition for medical necessity and medically necessary will substantially limit the Division's managed care organizations (MCOs), dental benefits manager (DBM) and pharmacy benefits manager's (PBM) ability to perform utilization management, resulting in an increase in expenditures for claims that would have been denied under the Division's standing definition of medical necessity and medically necessary.
- In calendar year 2019, combined claims and prior authorizations for the MCOs, DBM, and PBM denied based on medical necessity totaled \$370,701,639.
- The amount of previously denied claims and prior authorizations that would have been approved under the proposed legislation is unknown; however, it is reasonably assumed at least 50 percent or \$185,350,820 ($\$370,701,639 \times 50.0\%$) in claims would have been covered.
- Passage of the proposed legislation will result in an increase in expenditures for previously denied medical services estimated to exceed \$185,350,820.
- Medicaid expenditures receive matching funds at a rate of 66.295 percent federal funds to 33.705 percent state funds. Of this amount, \$62,472,494 ($\$185,350,820 \times 33.705\%$) will be in state funds and \$122,878,326 ($\$185,350,820 \times 66.295\%$) will be in federal funds in FY21-22 and subsequent years.

Division of Benefits Administration:

- The proposed legislation will apply to the State Group Insurance Plan that takes effect January 1, 2022.
- Based on information provided by the Division of Benefits Administration, the change in definition for medical necessity and medically necessary will alter the existing prior authorization and review programs currently in place with the State's medical carriers, resulting in an increase in expenditures for approximately 1.15 percent of medical treatments that would previously have been denied.
- The increase in state expenditures is estimated to be \$6,821,568 for the State Plan, and \$2,895,750 for the Local Education Plan in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in state expenditures is estimated to be \$3,410,784 ($\$6,821,568 \times 50.0\%$) for the State Plan and \$1,447,875 ($\$2,895,750 \times 50.0\%$) for the Local Education Plan in FY21-22.
- Some state plan member's insurance premiums are funded through federal dollars. The increase in federal expenditures in FY22-23 and subsequent years is estimated to be \$666,432. Due to the January 1, 2022 effective date, the increase in federal expenditures is estimated to be \$333,216 ($\$666,432 \times 50.0\%$) in FY21-22.
- The state does not contribute to the Local Government Plan; any increase in premiums will be entirely absorbed by the participating agencies and their members.
- It is estimated the Local Government Plan would be responsible for a mandatory increase in local expenditures estimated to be \$1,462,050 in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in local expenditures is estimated to be \$731,025 ($\$1,462,050 \times 50.0\%$) in FY21-22.

- The impact on local governments that do not opt into the Local Government Plan is unknown; therefore, the total increase in local expenditures is estimated to exceed \$1,462,050 in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in local expenditures is estimated to exceed \$731,025 in FY21-22.

Commerce and Insurance:

- The proposed legislation will not impact any programs or policies of the DCI; therefore, any fiscal impact is estimated to be not significant.

Total Fiscal Impacts:

- The total increase in state expenditures in FY21-22 is estimated to exceed \$67,331,153 (\$62,472,494 + \$3,410,784 + \$1,447,875).
- The total increase in state expenditures is estimated to exceed \$72,189,812 (\$62,472,494 + \$6,821,568 + \$2,895,750) in FY22-23 and subsequent years.
- The total increase in federal expenditures in FY21-22 is estimated to exceed \$123,211,542 (\$122,878,326 + \$333,216).
- The total increase in federal expenditure is estimated to exceed \$123,544,758 (\$122,878,326 + \$666,432) in FY22-23 and subsequent years.
- The total increase in local expenditures in FY21-22 is estimated to exceed \$731,025.
- The total increase in local expenditures is estimated to exceed \$1,462,050 in FY22-23 and subsequent years.

IMPACT TO COMMERCE:

(CORRECTED)

Increase Business Revenue –

Exceeds \$191,273,700/FY21-22

Exceeds \$197,196,600/FY22-23 and Subsequent Years

Increase Business Expenditures –

Less than \$191,273,700/FY21-22

Less than \$197,196,600/FY22-23 and Subsequent Years

Corrected Assumptions:

- Healthcare providers will experience an increase in business revenue for providing services.
- The increase in business revenue is estimated to exceed \$191,273,720 (\$67,331,153 + \$123,211,542 + \$731,025) in FY21-22 and exceed \$197,196,620 (\$72,189,812 + \$123,544,758 + \$1,462,050) in FY22-23 and subsequent years.
- For companies to retain solvency, any increased expenditures will be less than the amount of increased revenues collected. Therefore, the increase in business expenditures is estimated to be less than \$191,273,720 in FY21-22 and less than \$197,196,620 in FY22-23 and subsequent years.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Bojan Savic". The signature is written in a cursive, slightly stylized font.

Bojan Savic, Interim Executive Director

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